

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

WAYNE BELL,

Plaintiff,

v.

TRISTAN, et al.,

Defendants.

CV F- 03-5210 AWI DLB P  
FINDINGS AND  
RECOMMENDATION RE  
DISMISSAL OF ACTION

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. section 1983. Pending before the Court is the amended complaint.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C. § 1915(e)(2). If the Court determines that the complaint fails to state a claim, leave to amend may be granted to the extent that the deficiencies of the complaint can be cured by amendment. Lopez v. Smith, 203 F.3d 1122 (9<sup>th</sup> Cir. 2000) (en banc).

In the instant case, plaintiff brings action against the Director of the California Department of

1 Corrections, whom he identifies as Tristan. Plaintiff also brings action against Gail Lewis, Warden  
2 of Pleasant Valley State Prison; Correctional Lieutenant Sparkman; Correctional Sergeants Spalding  
3 and DeFrancis; and Correctional Officers McGhee, Ladd, Quezada, Fernando and Feige. Plaintiff  
4 alleges that on September 5, 2002, when inmates were released to the exercise yard, a large group of  
5 Southern Hispanics attacked a group of Black inmates. Plaintiff was part of the group of inmates  
6 who were attacked. Plaintiff alleges that all defendants' efforts to stop the attack were "ineffective"  
7 and that staff was "negligent." Later, plaintiff was found to have been a willful participant in the  
8 yard incident. Plaintiff was subject to administrative segregation and lost good time credits as a  
9 result of the disciplinary hearing.

10 Prison officials have a duty to take reasonable steps to protect inmates from physical abuse.  
11 Hoptowit v. Ray, 682 F.2d at 1250-51; Farmer v. Brennan, 511 U.S. 825, 833 (1994). To establish a  
12 violation of this duty, the prisoner must establish that prison officials were "deliberately indifferent  
13 to a serious threat to the inmates' safety." Farmer v. Brennan, 511 U.S. at 834. The deliberate  
14 indifference standard involves an objective and a subjective prong. First, the alleged deprivation  
15 must be, in objective terms, "sufficiently serious." Farmer v. Brennan, 511 U.S. at 834(citing Wilson  
16 v. Seiter, 501 U.S. 294, 298 (1991)). Second, the prison official must "know of and disregard an  
17 excessive risk to inmate health or safety." Id. at 837.

18 Plaintiff complains of negligent conduct on the part of defendants. Negligence does not rise  
19 to the level of deliberate indifference and therefore plaintiff's allegation fail to state a cognizable  
20 claim under the Eighth Amendment. "Ineffective" protection does not rise to the level of a  
21 constitutional violation.

22 To the extent that plaintiff seeks to challenge the adjudication of the disciplinary charges  
23 finding that he was a wilful participant, plaintiff's claim is barred. Pursuant to the rule announced in  
24 Edwards v. Balisok, 520 U.S. 641 (1997), a claim challenging the procedural aspects of a prison  
25 disciplinary hearing is not cognizable under section 1983 if the nature of the inmate's allegations are  
26 such that, if proven, would necessarily imply the invalidity of the result of the prison disciplinary  
27 hearing, unless the prisoner can demonstrate that the result of the disciplinary hearing has been  
28

1 previously invalidated. 520 U.S. at 648; see Butterfield v. Bail, 120 F.3d 1023, 1024 (9th Cir. 1997)  
 2 (applying Balisok to dismiss action in which a prisoner sought monetary relief based on allegations  
 3 that prison officials relied on false information to find him ineligible for parole). Plaintiff's  
 4 allegations, if proven, would necessarily imply the invalidity of the disciplinary hearing at issue.  
 5 Therefore plaintiff's claim is not cognizable under § 1983 absent a demonstration that the prison  
 6 disciplinary proceedings were previously invalidated or set aside. Consistent with Edwards v.  
 7 Balisok, plaintiff's claim is not cognizable under § 1983.

8 Finally, plaintiff brings action against two high-ranking individuals: the Director of the  
 9 Department of Corrections and the Warden of Pleasant Valley State Prison. Supervisory personnel  
 10 are generally not liable under section 1983 for the actions of their employees under a theory of  
 11 respondeat superior and, therefore, when a named defendant holds a supervisory position, the  
 12 causal link between him and the claimed constitutional violation must be specifically alleged. See  
 13 Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir.  
 14 1978), cert. denied, 442 U.S. 941 (1979). To show a prima facie case of supervisory liability,  
 15 plaintiff must allege facts indicating that supervisory defendants either: personally participated in the  
 16 alleged deprivation of constitutional rights; knew of the violations and failed to act to prevent them;  
 17 or promulgated or implemented a policy "so deficient that the policy itself "is a repudiation of  
 18 constitutional rights" and is "the moving force of the constitutional violation."" Hansen v. Black,  
 19 885 F.2d 642, 646 (9th Cir. 1989); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Because  
 20 plaintiff has alleged no facts indicating supervisory liability on the part of the Director of the  
 21 Department of Corrections and the Warden of Pleasant Valley State Prison, this claim is dismissed.

22 In summary, the Court HEREBY RECOMMENDS that plaintiff's amended be dismissed in  
 23 its entirety. In doing so, the Court does not recommend that leave to amend be granted as plaintiff  
 24 has already been granted the opportunity to amend the complaint and was unable to cure the  
 25 deficiencies.

26 These Findings and Recommendations will be submitted to the United States District Judge  
 27 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**  
 28

1 **days** after being served with these Findings and Recommendations, the parties may file written  
2 objections with the court. The document should be captioned “Objections to Magistrate Judge’s  
3 Findings and Recommendations.” The parties are advised that failure to file objections within the  
4 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d  
5 1153 (9th Cir. 1991).

6  
7 IT IS SO ORDERED.

8 **Dated: December 1, 2006**  
9 3b142a

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE